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Subject: FW: Unanimous Supreme Court Victory for PLF & the Sacketts!

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Historic Supreme Court ruling allows the Sacketts to fight EPA takeover of their land

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-- Damien M. Schiff,
PLF Principal Attorney

WASHINGTON D.C.: March 21, 2012: In a precedent-setting victory for the rights of all property owners, the [United States Supreme Court today held](#) that landowners have a right to direct, meaningful judicial review if the U.S. Environmental Protection Agency effectively seizes control of their property by declaring it to be "wetlands."

The Court ruled in favor of Mike and Chantell Sackett, of Priest Lake, Idaho, who were told by EPA - and by the Ninth Circuit - that they could not get direct court review of EPA's

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claim that their two-thirds of an acre parcel is "wetlands" and that they must obey a detailed and intrusive EPA "compliance" order, or be hit with fines of up to \$75,000 per day.

In their challenge to EPA's takeover of their land, the Sacketts are [represented](#), free of charge, by attorneys with Pacific Legal Foundation, the leading legal watchdog organization that litigates for limited government, property rights, and a balanced approach to environmental protection, in courts nationwide.

PLF Principal Attorney Damien M. Schiff argued the Sacketts' case at the Supreme Court on January 9. He issued this statement today, after the Court's ruling in favor of the Sacketts was announced:

"EPA is not above the law," said Schiff. "That's the bottom line with today's ruling. This is a great day for Mike and Chantell Sackett, because it confirms that EPA can't deny them access to justice. EPA can't repeal the Sacketts' fundamental right to their day in court. And for that reason, it is a great day for all Americans, for all property owners, and for the rule of law. The justices have made it clear that EPA bureaucrats are answerable to the law and the courts just like the rest of us. EPA can't try to micromanage people and their property - it can't order property owners to dance like marionettes - while denying them any meaningful right to appeal to the courts. It can't threaten property owners with financial ruin and not have to justify its threats to a judge. And it can't issue lazy, drive-by 'wetlands' edicts about private property. It will have to put in some honest work and use credible science, because the regulators must be able to justify their wetlands orders in a court of law.



The Sacketts empty lot

"Rest assured, while today's ruling strengthens everyone's individual rights and property rights, and everyone's access to justice, it does not weaken legitimate environmental protection one iota," Schiff continued. "Regulators will simply have to be professional and thorough, not careless and slipshod, when they issue wetlands orders. In the case of urgent pollution threats, EPA will still have the power, as it does now, to seek an immediate court injunction. But when there is no emergency, EPA can't start ordering property owners around - and threatening them with tens of millions of dollars in fines, as with the Sacketts - without first doing some genuine due diligence. EPA will have to be prepared to show a reviewing court that its wetlands regulations are really necessary - not just a power trip."

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Mike Sackett issued this statement:

"We are very thankful to the Supreme Court for affirming that we have rights, and that the EPA is not a law unto itself and that the EPA is not beyond the control of the courts and the Constitution," said Mike Sackett. "The EPA used bullying and threats of terrifying fines, and has made our life hell for the past five years. It said we could not go to court and challenge their bogus claim that our small lot had 'wetlands' on it. As this nightmare went on, we rubbed our eyes and started to wonder if we were living in some totalitarian country. Now, the Supreme Court has come to our rescue, and reminded the EPA - and everyone - that this is still America, and Americans still have rights under the Constitution. We want to thank Pacific Legal Foundation for defending us, without charge! Without Pacific Legal Foundation, this day would have not come, and this Court ruling that vindicated the rights of all Americans against bureaucratic bullying, would not have happened."

The Sacketts' saga: EPA overreach and a Ninth Circuit denial

Mike and Chantell Sackett bought a small parcel in 2005 with the intent to build a three-bedroom family home. The lot is in a residential area, and neighbors have built their own houses. The Sacketts obtained a county permit to build, and started laying gravel. But then they were devastated by EPA, which came in, without hearings or notice, and claimed the property is "wetlands" - and ordered them to return it to the agency's liking, on pain of astronomical fines.

With good reason to believe the land is not "wetlands," the Sacketts wanted to contest EPA's claim. But EPA denied their request for a hearing - and the Ninth Circuit ruled they had no right to immediate judicial review. It held that they would first have to go through a years-long "wetlands" permit process, which could cost 12 times the value of their land!

Represented by attorneys with PLF, the Sacketts were asking the Supreme Court: When property owners are hit by an EPA wetlands "compliance order," do they have a right to meaningful judicial review - or is EPA effectively above the law? Today, the Supreme Court answered, in effect, that EPA is under the law, not above it, and that Americans still have the right to their day in court.

ABOUT PACIFIC LEGAL FOUNDATION: Donor-supported PLF (www.pacificlegal.org) is the leading watchdog organization that litigates, without charge, for limited government, property rights, individual rights, and a balanced approach to environmental regulations, in courts nationwide. The Sackett case marks the seventh time that the U.S. Supreme Court has taken a PLF case for review. Previous high-profile PLF property rights victories at the Supreme Court include *Nollan v. California Coastal Commission* (1987); *Suitum v. Tahoe Regional Planning Agency* (1996); *Palazollo v. Rhode Island* (2007); and *Rapanos v. United States* (2006).



Rob Rivett
President
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